



January 2010

Updates On The News

Power to the Parents Redux, Extended – A couple of months ago we described the Commission’s inquiry into “Empowering Parents and Protecting Children in an Evolving Media Landscape”. Comments on any (or all) of the wide-ranging issues raised there were originally due by January 25 (and replies by February 24). But at the request of a number of parties who plan to chip in their two cents’ worth, the Commission has extended those deadlines. Now comments are due on ***February 24, 2010*** and replies on ***March 26, 2010***.

Return of the tech advisers? – Way back in the day, each Commissioner enjoyed not only his/her own in-office lawyer (dubbed “legal assistant”) on hand, but also an engineer to help personally guide the Commissioner through the technical arcana that necessarily populate most every FCC decision of any moment. Somewhere along the line, what with belt-tightening and all, the “engineering assistant” positions got sloughed off. As a result, the Commissioners – none of them engineers, as far as we can tell – have tended to rely increasingly on the Office of Engineering and Technology (OET) for direction when it comes to the technical nitty-gritty.

That has not been a bad thing, by any means. Fortunately for us all, OET currently consists of some of the most seasoned and well-respected engineers in the Commission. Their shop runs efficiently, largely out of the public eye, and manages to maintain an admirable level of consistency in engineering standards and practices. Driven by the physics and not the politics, they do their job and they do it well.

But look out. There’s a move afoot on Capitol Hill to bring individual technical advisers back to the Commissioners’ offices. Senators Snowe (R-ME) and Warner (D-VA) introduced a bill in December that would do just that. Their proposal is no doubt born of the best intentions. Warner wants to make sure that the Commissioners have “access to the best information possible, from all relevant disciplines, and in a timely manner.” Snowe wants each Commissioner to have “in-house technical expertise to make well informed regulatory decisions.”

Hard to argue with all that . . . except that the unstated assumptions are that Commissioners do not already have such timely access to expertise, and that the additional staffing layer would automatically provide it and thereby improve the pace and quality of the FCC’s decisionmaking. And it’s not intuitively obvious that those

assumptions are accurate. Rather, the addition of personal “technical advisers” for the Commissioners could lead to the unnecessary politicization of technical issues and unwanted delay in resolution of proceedings as more individuals get injected into the process.

Sure, it might be nice to think that each Commissioner is in a position to engage in individualized evaluation of highly technical stuff. But do we really need five separate assessments of scientific/physical/technical information which, at least in theory, should not be open to much debate? Agreed, we can all dicker about the policy implications of data, but that’s what lawyers are for. Generating, organizing and presenting the data in the first place – that’s OET’s job.

So while there may be some surface appeal to the Snowe/Warner proposal, it seems at least unnecessary and possibly counter-productive – particularly when the Commissioners already have OET on hand.

At this point it’s impossible to reliably predict whether the Snowe/Warner bill will make it into law.

McDowell on localism – Remember a couple of years ago, when the FCC was red hot on the idea of reimposing dramatic additional burdens on broadcasters in order to achieve “localism”? The Commission’s attention has since been diverted from that idea, although the “localism” proceeding is still technically pending. Recently, Commissioner McDowell authored an op-ed piece on the subject of that proceeding. His comments were refreshingly candid: “all of us should be asking why the Commission needs to devote scarce time and resources to reviving any old localism rules at all. Broadcasters today face a level of competition for audiences that was unimaginable 40, 20 or even 10 years ago. They must adapt to meet the needs and desires of their communities if they want to stay alive.” That makes sense. Ideally that approach will prevail if localism ever wends its way back onto the Commission’s agenda – which, in view of the FCC’s seeming monomaniacal fixation on all things broadband (to the exclusion of all things NOT broadband), may not be anytime soon.